

DEFINITION OF TERMS

CERTIFICATED - Any person required to hold a certificate as a requirement for employment. Examples are teachers, superintendents, administrators, etc.

COMPENSATION - Gross wages or salaries payable to the member for personal services *performed* during the plan year. Compensation **includes** overtime pay, member retirement contributions, and amounts contributed by the member to plans under §125, 403(b), and 457 of the Internal Revenue. Compensation **does not include** amounts the PERB determines were fraudulently obtained, compensation for unused sick leave or unused vacation leave converted to cash payments, insurance premiums converted to cash payments, reimbursement for expenses incurred, fringe benefits, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements.

10% CAP - That part of a member's compensation for the 12-month period which exceeds the member's compensation with the same employer for the preceding 12-month period by more than 10% that is excluded in the determination of final average compensation.

COUNTY SCHOOL OFFICIAL - The county superintendent, county school administrator or district superintendent and any person serving in his or her office who is required by law to have a teacher's certificate.

FINAL AVERAGE COMPENSATION - The three highest 12-month periods of salary, counting back from the final month of pay, used to calculate a retirement benefit.

FISCAL YEAR - Any year beginning July 1 and ending June 30.

MEMBER - Any person who has an account in the School Retirement Fund.

NONCERTIFICATED - Any person not required to hold a certificate as a requirement for employment. For example: secretaries, cooks, custodians, teacher's aides, bus drivers, etc.

PERB - Public Employees Retirement Board.

REGULAR INTEREST - Interest fixed at a rate equal to the daily treasury yield curve for one-year treasury securities, as published by the Secretary of the Treasury of the United States, that applies on July 1 of each year, which may be credited monthly, quarterly, semiannually, or annually as the board may direct.

REGULAR EMPLOYEE — An employee who is hired for full-time service, or a part time schedule on an ongoing basis for 15 or more hours per week.

SCHOOL EMPLOYEE – An employee whose employer is a Nebraska school district, an educational service unit, the State of Nebraska or a county (if the position with the state or county requires the employee to hold a teaching certificate).

SUBSTITUTE EMPLOYEE – A temporary employee hired on an intermittent basis to replace a temporarily absent regular employee.

TEMPORARY EMPLOYEE – An employee who is .

TERMINATION - Termination of employment occurs on the date on which the members' employer determines that the member's employer-employee relationship with the employer is dissolved. The employer must notify NPERS of the date on which such a termination has occurred. Termination of employment does not include ceasing employment at the end of the school year if the member subsequently provides regular service (whether or not compensated) on a regular basis in any capacity for any school district other than a Class V school district within 180 calendar days after ceasing employment or if the PERB determines that a purported termination was not a bona fide separation from service with the employer..

VESTING CREDIT - Credit for years or a fraction of a year of participation in a Nebraska government plan for purposes of determining eligibility for benefits under the School Employees Retirement Act. Such credit will not be included as years of service credit in the benefit calculation.

POLICY STATEMENTS

RELEASE OF INFORMATION POLICY

Member account information will only be released under the following conditions:

1. The member personally visits the NPERS' Office.
2. The member telephones NPERS and provides adequate proof of identity.
3. NPERS receives a member's written request for information.
4. NPERS receives a written release signed and dated by the member (must be less than six months old).
5. NPERS receives a court order to release information to someone other than the member.
6. NPERS receives a request for information from the guardian or conservator accompanied by proper certified authorization (must be less than three months old).
7. NPERS receives a request for information from a personal representative of a deceased member accompanied by proper certified authorization (must be less than three months old).
8. NPERS receives a request for information from an individual holding a power of attorney with authorization to receive confidential information
9. Member account information may be released to the member's employer for verification of necessary information. The Internal Revenue Service may receive account information to comply with federal tax laws. Account information may be released as necessary under a qualified domestic relations order.

Member account information may include name, address, account balances, beneficiaries, benefit options or payments made to a member

DISABILITY REVIEW POLICY

PURPOSE: To provide guidelines for disability.

Disability is defined as an "inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration."

Review of members' disability applications will take place by the Public Employees Retirement Board (PERB) in Executive Session.

All disability retirement applications approved by the PERB may be reevaluated one year

from the effective date of retirement. The re-evaluation shall be made by a disinterested physician licensed to practice medicine in Nebraska. In addition, if the disinterested physician states that the member is incapable of selecting his/her retirement option, the PERB may require appointment of a conservator or single transaction protective order be sought through the courts to assist the member.

If a member's disability retirement application is continually approved for at least three years, the PERB will determine when the next reevaluation will occur.

Adopted by the PERB at its regular meeting held on March 15, 1993.

Revised and adopted by the PERB at its December 19, 1994, Board meeting.

FACSIMILE MESSAGES

The following will be honored via facsimile (fax) if signed by the member:

- ◆ Requests for account information
- ◆ Requests for beneficiary listings
- ◆ Requests for benefit estimates
- ◆ Changes in tax withholding

Original NPERS forms are required to process benefits or payments or to change beneficiaries or change of address for payment requests. However, faxed applications for a retirement benefit or a refund will be accepted to determine effective date of processing of payment if the original form is received within five working days. Faxed Beneficiary Designation forms will also be accepted with timely receipt of the original form.

E-MAIL POLICY

General questions about the pension plan and requests for forms may be communicated through e-mail

At the present time, NPERS does not answer individual account questions by e-mail; such question must be a signed, written request.

STATUTE REFERENCES

Neb. Rev. Stat. §§:

42-1101 through 42-1113

79-901 through 79-977.01

84-1501 through 84-1513

Spousal Pension Rights Act.

School Retirement Act.

Public Employees Retirement Board.

RULES AND REGULATIONS

TITLE 303: PUBLIC EMPLOYEES RETIREMENT BOARD

CHAPTER1 – BOARD MANAGEMENT

Current with amendments through May 5, 2003.

001 Board Meetings

- 001.01 The Nebraska Public Employees Retirement Board shall hold a regular meeting at least once each month. The Board shall by resolution adopted at or before the December Board meeting each year, determine the regular meeting dates for the following calendar year. The board may, by resolution, select a different date for holding a regular meeting if circumstances arise which give cause for such a change. Emergency and special meetings may be held upon the call of the Chairperson, Vice-Chairperson, or three Board members.
- 001.02 Except when it is necessary to hold an emergency meeting without reasonable advance public notice, notice of the time and place of Board meetings shall be given by publication in the Lincoln Journal Star and the Omaha World Herald newspapers at least five days in advance of each meeting. The Board secretary shall maintain a list of the news media requesting notification to them of the time and place of each meeting, including emergency meetings, and the subjects to be discussed at that meeting.
- 001.03 Every meeting of the Public Employees Retirement Board shall be open to the public and shall be conducted in accordance with the open meetings provisions set forth in Neb. Rev. Stat. § 84 1408 through 84 1414 and, to the extent not otherwise governed by state law or these regulations, Robert's Rules of Order.
- 001.04 A quorum of the Board shall be required for the Board to hold a meeting and to conduct Board business. Attendance at any meeting by four voting members of the Board shall constitute a quorum.
- 001.05 A member may receive an excused absence from regular Board meetings upon the affirmative vote of four members of the Board. In the event a Board member has more than three unexcused absences from regular Board meetings, the Chairperson shall notify the Governor of such absences and request the Governor remove the member from the Board for cause pursuant to 84 1501.
- 001.06 All motions before the Board shall require the affirmative vote of a majority of voting members present at the meeting of the Board to pass. All votes shall be taken by roll call.

002 Officers

- 002.01 The Board shall elect a Chairperson, a Vice Chairperson, and a Secretary at the Board's January meeting. Any duty imposed upon the Chairperson by these rules and regulations may be performed by the Vice Chairperson in the absence of the Chairperson. In the absence of both the Chairperson and the Vice Chairperson, the Secretary shall have the authority to call the meeting to order and conduct an election for a Chairperson Pro Tem.
- 002.02 The Board Chairperson and Secretary shall be responsible for preparing the agenda for each meeting, publishing notice of the meeting, and preparing the minutes of the meeting. A preliminary agenda for all regular Board meetings shall be distributed to the Board at least seven days in advance of the meeting.

The final agenda for each regular meeting shall be available for distribution not less than 24 hours before the meeting.

003 Committees

- 003.01 The following shall be standing committees of the Board:
- 003.01(a) Policy Committee;
 - 003.01(b) Legislative Committee;
 - 003.01(c) Budget and Finance Committee
 - 003.01(d) Personnel Committee; and
 - 003.01(e) Long-Range Planning Committee.
- 003.02 The Chairperson may organize additional ad hoc committees as necessary.
- 003.03 Committees shall be composed of not more than three Board members. The Chairperson shall appoint Board members to the various committees and shall appoint a chairperson of each committee. Committees shall only serve as working committees and may not take formal action on behalf of the Board. All committee proposals, findings and recommendations must come before the Board for formal action to be binding upon the Board.

004 Board Administrative Policies

- 004.01 The Board shall appoint a Director to administer the Retirement Systems under the direction of the Board. The Board shall conduct a performance evaluation of the Director at least annually.
- 004.02 Except as expressly provided by statute or regulation, the Board may delegate to the Director responsibility for all day to day operations and decisions. All actions and decisions of the Director shall be subject to review by the Board upon the filing of an appeal by any person aggrieved by any action or decision of the Director.
- 004.03 The Board shall review and approve or disapprove all applications for disability retirement, emergency withdrawals from the deferred compensation plan, annual budget requests, monthly expense disbursements and retirement benefit payments, administrative service contracts, actuarial service provider contractions, quadrennial compliance audit contract, and proposed rules and regulations. The Board shall be provided with copies of all actuarial reports, and all financial and compliance audit reports.

005 Board Travel Policy

- 005.01 Except for routine travel to and from Board meetings, Board members and the Director shall submit travel requests to the Board for consideration at least 30 days in advance of such travel. The request shall state a business related reason for that travel and an estimate of the cost involved.
- 005.02 Domestic Travel by any Board member or the Director within the forty-eight contiguous United States shall be approved upon an affirmative vote of four members of the Board. Foreign travel and travel to Alaska or Hawaii by any Board member, the Director, or by Retirement Systems' staff shall be approved only upon the affirmative vote of at least five Board members. Any Board member who attends a conference paid for in whole or in part by Retirement Systems funds shall present a report to the Board at the next regular meeting following the member's return.

Enabling Legislation: Neb. Rev. Stat. § 79-905 and 84-1503

TITLE 303: PUBLIC EMPLOYEES RETIREMENT BOARD

CHAPTER 2 - SCHOOL RETIREMENT FUND - REMITTANCES

Current with amendments through Update #277, dated April 22, 2002.

001 Remittances by Employers for Employee and Employer contributions for the School Retirement Fund.

- 001.01 Remittances (monies) for Employee and Employer Contributions must be submitted to the Retirement Office on a monthly basis. The envelope containing the Remittances must be postmarked by the 10th of the following month, i.e. July remittances must be postmarked by August 10th. If the 10th falls on Saturday, Sunday or holiday, and the envelope containing the report is postmarked the first workday after the 10th, the report will be considered as received on time.
- 001.02 Monthly remittances (monies) must be made to the Retirement Office on only one draft, money order, or check.
- 001.03 Each Employer shall on a monthly basis, transmit a report listing individual salaries, contributions and hours worked to the Retirement Office in such form as is approved by the Retirement Board. The envelope containing this report must be postmarked by the 10th of the following month, i.e. July report must be post-marked by August 10th. If the 10th falls on Saturday, Sunday or holiday, and the envelope containing the report is postmarked the first workday after the 10th, the report will be considered as received on time.
- 001.04 A Final Pay Report must be submitted by the Employer only when requested by the Retirement Office. This request will designate a due date for submission of the report.

Enabling Legislation: Neb. Rev. Stat. § 79-1501
 Neb. Rev. Stat. § 79-1503
 Neb. Rev. Stat. § 79-1533
 Neb. Rev. Stat. § 84-1501
 Neb. Rev. Stat. § 84-1503

TITLE 303: PUBLIC EMPLOYEES RETIREMENT BOARD

CHAPTER 3 - RETIREMENT NUMBER

Current with amendments through Update #277, dated April 22, 2002.

001 Assignment of Retirement Number

The Nebraska Retirement Systems will either assign a number or use the member's social security number as an account number. The assigned account number will not be changed or reassigned.

Enabling Legislation: Neb. Rev. Stat. § 23-2305 (1987)
 Neb. Rev. Stat. § 24-704 (Supp. 1988)
 Neb. Rev. Stat. § 79-1503 (1987)
 Neb. Rev. Stat. § 81-2019 (Supp. 1988)
 Neb. Rev. Stat. § 84-1305 (1987)
 Neb. Rev. Stat. § 84-1503 (Supp. 1988)

TITLE 303: PUBLIC EMPLOYEES RETIREMENT BOARD

CHAPTER 4 - SCHOOL RETIREMENT FUND - REFUND PROCEDURE

Current with amendments through Update #277, dated April 22, 2002.

001 **Issuing Refund Checks.**

Members of the School Retirement System who have ceased employment in a Nebraska Public School will be eligible to receive payment of their accumulated account in the fourth (4) month after they receive their final pay from the school or twenty (20) to fifty-five (55) days after filing a completed "Application for Refund" form with the Retirement Office, whichever is later.

Refund warrants will be mailed after the 20th day of the month in which the Application for Refund has been processed.

Enabling Legislation: Neb. Rev. Stat. § 79-1503
 Neb. Rev. Stat. § 84-1503

TITLE 303: PUBLIC EMPLOYEES RETIREMENT BOARD

CHAPTER 5 TYPES OF EVIDENCE TO DETERMINE AGE ETC.

Current with amendments through August, 2002.

001 **Scope Of This Rule**

- 001.01 This rule governs the types of proof acceptable to determine age, death, marriage relationships, and parent-child relationships for members and beneficiaries in the retirement systems under the administration of the Nebraska Public Employees Retirement Systems (NPERS). The systems to which this rule applies include: the Retirement System for Nebraska Counties, the Nebraska Retirement Fund for Judges, the Nebraska School Employees Retirement System, the Nebraska State Patrol Retirement System, the State Employees Retirement System, and the State Deferred Compensation Plan.
- 001.02 If, under the respective retirement systems, proof of age, proof of death, proof of marital status or proof of parent/child relationship is required in order to effect the proper distribution of benefits to a member or the beneficiary of a member, this rule shall govern the types of proof necessary for NPERS to make the legally-required factual determinations.

002 **Types Of Evidence To Prove Age:**

- 002.01. Preferred evidence: The best type of evidence to prove a member or beneficiary's age is —
- 002.01(a) A birth certificate recorded before age 5;
 - 002.01(b) A religious record of birth or baptism recorded before age 5; or
 - 002.01(c) Notification of registration of birth made before age 5.
 - 002.01(d) A delayed birth certificate.
- Other evidence of age: if an individual cannot obtain preferred evidence of age, he or she will be asked to submit other convincing evidence to prove age. The other evidence may be two or more of the following records, with the records of highest value listed first:
- 002.01(e) Hospital birth record or certificate.
 - 002.01(f) Physician's or midwife's birth records.
 - 002.01(g) Bible or other family record.
 - 002.01(h) Naturalization record.
 - 002.01(i) Military record.
 - 002.01(j) Immigration record.
 - 002.01(k) Passport.
 - 002.01(l) Selective service registration record.
 - 002.01(m) Employer's record.
 - 002.01(n) Marriage record.
 - 002.01(o) A statement signed by the individual giving the reason why he or she cannot obtain other convincing evidence of age and the sworn statements of two other persons who have personal knowledge of the age that the individual is trying to prove.

003 **Types Of Evidence To Prove Death:**

- 003.01 Preferred evidence of death: the best evidence of a person's death is –
- 003.01(a) A certified copy of or extract from the public record of death, or verdict of the coroner's jury of the state or community where the death occurred; or a certificate or statement of death issued by a local registrar or public health official;
 - 003.01(b) A signed statement of the funeral director, attending physician, or official of an institution where death occurred;
 - 003.01(c) A certified copy of, or extract from, an official report or finding of death made by an agency or department of the United States or any state; or
 - 003.01(d) If death occurred outside the United States, and official report of death by a United States Consul or other authorized employee of the United States Department of State, or a certified copy of the public record of death in a foreign country.
- 003.02. Other evidence of death: If the preferred evidence of death cannot be obtained, the individual who must furnish evidence of death will be asked to explain the reason thereof and to submit other convincing evidence, such as sworn statements of at least two persons who have personal knowledge of the death. These persons must be able to swear to the date, time, place, and cause of death.

004 **Evidence Of A Valid Marriage**

- 004.01. Preferred evidence: preferred evidence of a valid marriage is
- 004.01(a) A copy of the public record of the marriage, certified by the custodian of the record or by an NPERS employee;
 - 004.01(b) A copy of a religious record of the marriage certified by the custodian of the record or by an NPERS employee; or
 - 004.01(c) The original certificate of marriage.
- 004.02. Other evidence of a marriage: if preferred evidence of a marriage cannot be obtained, the applicant must state the reason therefor in writing, and submit either –
- 004.02(a) A sworn statement of the clergyperson or official who performed the marriage ceremony; or
 - 004.02(b) Other convincing evidence, such as the sworn statements or at least two persons who have direct knowledge of the marriage, preferably eyewitnesses to the marriage ceremony.

005 **Evidence That A Marriage Has Ended.**

- 005.01. Preferred evidence: preferred evidence that a marriage has ended is –
- 005.01(a) A certified copy of the decree of divorce or annulment; or
 - 005.01(b) Evidence of the death (see subsection 002 of this section) of a party to the marriage.
- 005.02. Other evidence that a marriage has ended. If the preferred evidence that a marriage has ended cannot be obtained, the member or beneficiary must explain the reason therefore and submit other convincing evidence that the marriage has ended.

006 Evidence Of Parent-Child Relationships.

006.01. Evidence of natural parent-child relationships.

006.01(a) Preferred evidence: If a member or beneficiary is the natural parent or child of a member, preferred evidence of the relationship is a copy of the member's or child's public or religious birth record made before the child was 5. If the record shows the same last name, it will be accepted as valid.

006.01(b) Other evidence of natural parent-child relationships: When the preferred evidence of a parent-child relationship cannot be obtained, NPERS may ask the applicant for evidence of one of the following:

006.01(b)(i) Evidence of the member's marriage or of the marriage of the member's parents, if needed to remove any reasonable doubt of the relationship;

006.01(b)(ii) Evidence that the person claiming to be a child of the presumed parent would be able to inherit under intestate succession laws of the state where the death occurred (or in which the presumed parent had a permanent home); or

006.01(b)(iii) A signed statement from the presumed parent that the person in question is his or her natural child

006.01(b)(iv) A copy of a court order showing that the person in question has been declared to be the child of the presumed parent, or a copy of a court order requiring the presumed parent in question to contribute to the support of the person in question because such person is his or her child,

006.01(b)(v) Or other such supporting evidence as may be required in order to establish the parent/child relationship.

006.02. Evidence of a stepparent / stepchild relationship: NPERS may require evidence by means of the measures as specified in 005.01 or 005.02 to show a child's relationship (natural or adoptive) with the spouse of the presumed stepparent and that a valid marriage existed between the presumed stepparent and the spouse.

006.03. Evidence of a parent-child relationship by legal adoption:

006.03(a) Preferred evidence of legal adoption include:

006.03(a)(i) A copy of the decree or order of adoption, certified by the custodian of the record;

006.03(a)(ii) A photocopy of the decree or order of adoption; or

006.03(a)(iii) Evidence that the spouse of a decedent adopted the children of the decedent after the decedent's death, as specified in the above two subsections.

006.03(b) Other evidence of legal adoption: In the event that the record of adoption is sealed by court order or by law, NPERS will accept as proof of adoption an official notice received by the adopting parents at the time of adoption that the adoption has been completed or a birth certificate issued as a result of the adoption proceeding.

Statutory Authority:

County	Neb. Rev. Stat. § 23-2305
	Neb. Rev. Stat. § 23-2312
Judges	Neb. Rev. Stat. § 24-704
School	Neb. Rev. Stat. § 79-904
	Neb. Rev. Stat. § 79-906
	Neb. Rev. Stat. § 79-907
Patrol	Neb. Rev. Stat. § 81-2019
	Neb. Rev. Stat. § 81-2021
State	Neb. Rev. Stat. § 84-1305
	Neb. Rev. Stat. § 84-1305.01
PERB	Neb. Rev. Stat. § 84-1503
	Neb. Rev. Stat. § 84-1504
	Neb. Rev. Stat. § 84-1512

TITLE 303: PUBLIC EMPLOYEES RETIREMENT BOARD**CHAPTER 8 - MEMBERSHIP ELIGIBILITY**

Current with amendments through Update #277, dated April 22, 2002.

001 Source of Compensation Not a Factor

Eligibility for membership is determined by who the employer is rather than by the source of compensation.

Enabling Legislation: Neb. Rev. Stat. § 79-1503 (1987)
 Neb. Rev. Stat. § 84-1503 (Supp. 1988)

TITLE 303: PUBLIC EMPLOYEES RETIREMENT BOARD

CHAPTER 9 - REPORTING AGENTS

Current with amendments through Update #277, dated April 22, 2002.

001 Who can be a Reporting Agent

Primary reporting agents to the School Retirement System shall be either the city superintendent, county superintendent, school board secretary or board of education secretary. The primary reporting agent may select an alternate agent. This agent should be familiar with all reporting requirements established by the Retirement Office.

Enabling Legislation: Neb. Rev. Stat. § 79-1503 (1987)
 Neb. Rev. Stat. § 84-1503 (Supp. 1988)

TITLE 303: PUBLIC EMPLOYEES RETIREMENT BOARD

CHAPTER 11 - SERVICE CREDIT

Current with amendments through Update #277, dated April 22, 2002.

001 Fiscal Year Service Credit Determination

- 001.01 Prior to July 1, 1986, at least one hundred and twenty full time days of service in a fiscal year shall be the equivalent of one year of service credit.
- 001.02 July 1, 1986 and after, one thousand thirty-two hours in one fiscal year shall be the equivalent of one year of service credit.
- 001.03 In no case shall more than one year of service be credited during a fiscal year.

Enabling Legislation: Neb. Rev. Stat. § 79-1503 (1987)
 Neb. Rev. Stat. § 84-1503 (Supp. 1988)

TITLE 303: PUBLIC EMPLOYEES RETIREMENT BOARD

CHAPTER 12 - APPEAL OF BOARD ACTIONS AND DECISIONS

Current with amendments through Update #277, dated April 22, 2002.

001 **General:**

Pursuant to Neb. Rev. Stat. §§ 23-2305.01, 24-704.01, 79-904.01, 79-950, 81-2019.01, 84-1305.02, 84-1503, and the Administrative Procedures Act, these rules apply to the initiation and procedure regarding contested cases heard before the Public Employees Retirement Board.

002 **Definitions:**

For purposes of this rule, the following definitions apply.

- 002.01. Agency: means the Nebraska Public Employees Retirement Systems Agency.
- 002.02. Contested case: means the proceeding in which the legal rights, duties or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing.
- 002.03. Board: means the Public Employees Retirement Board.
- 002.04. Director: means the Director of the Nebraska Public Employees Retirement Systems Agency.
- 002.05. Ex Parte Communications: means an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. Ex parte communications shall not include:
 - 002.05(a) Communications which do not pertain to the merits of a contested case;
 - 002.05(b) Communications required for the disposition of ex parte matters as authorized by law;
 - 002.05(c) Communications in a ratemaking or rulemaking proceeding; and
 - 002.05(d) Communications to which all parties have given consent.
- 002.06. Hearing Officer: means the person or persons conducting a contested case or contested case as designated by the Director, or a member of the Board, if the Board is present at a hearing.
- 002.07. Party: means the person by or against whom a contested case is brought or a person allowed to intervene in a contested case.

003 **Pleadings:**

- 003.01. All pleadings shall be made on white, letter-sized (8 1/2 x 11) paper and shall be legibly typewritten, photostatically reproduced, printed, or handwritten. If handwritten, pleadings shall be submitted on forms provided by the Agency, and shall be written in blue or black ink.
- 003.02. All pleadings shall be filed with the Agency at its official office. Filings may be accomplished by personal delivery or U.S. mail and may only be received during regular office hours of the Agency. Upon good cause shown, the Director may allow pleadings to be submitted by telefacsimile (fax).
- 003.03. Pleadings in a contested case shall include a petition and answer, and may include a reply, notice, motion, stipulation, objection or order or other formal

written document filed in a proceeding before the Agency and/or a Hearing Officer.

- 003.04. All pleadings shall meet the requirements of these rules to be made a part of the record of a contested case.
- 003.05. All pleadings subsequent to the initial petition shall be served by the party filing such pleading upon all attorneys of record or representatives of record and upon all unrepresented parties. Service shall be made personally or by first-class or certified mail. Written proof of such service shall be filed with the Agency.

004 Initiation of the Contested Case:

- 004.01 Any initiation of a contested case shall not be perfected until a member or other aggrieved party has secured a written document signed by the Chairperson of the Board or the Director regarding the matter in question, which document shall constitute a decision or action of the Board from which a contested case appeal is allowed under statute
 - 004.01(a) It shall be the duty of the Director or Chairperson of the Board to decide the matter and issue such documents for purposes of perfecting an appeal and contested case. The document shall be personally served on the member or aggrieved party, or shall be sent by certified mail, return receipt requested, to the member or aggrieved party.
- 004.02 Any person who disputes an action or a benefit or payment adjustment of the Board or deems himself or herself to have been aggrieved by an action or decision of the board may appeal the action or decision and request a hearing by filing a Petition with the Board not later than 30 days after such official action or decision has been taken by the Board. The 30 days shall commence on the date of service of the document.
- 004.03 The Agency shall serve a copy of the petition on each respondent listed in the petition personally or by first-class or certified mail. Written proof of such service shall be filed with the agency.
- 004.04 The petition shall include the following:
 - 004.04(a) A heading specifying the name of the agency, the nature of the pleading, the name and address of the petitioner and the petitioner's retirement number.
 - 004.04(b) A separate identification and quotation of each of the decisions or actions of the Board complained of, and the exceptions and contentions of the petitioner thereon. A copy of each document that constitutes a decision or action of the Board complained of shall be attached to the petition.
 - 004.04(c) A brief recitation of the facts out of which the petitioner's petition arises and any substantial conflict in the evidence as to any fact involved.
 - 004.04(d) A concise statement of the action the Board is being requested to take.
 - 004.04(e) A statement as to whether the aggrieved party requests a formal or an informal hearing on the matter.
 - 004.04(f) The petition shall be signed by the petitioner and the petitioner's attorney, if the petitioner is represented by counsel.

- 004.05. Notwithstanding the procedures set forth in these regulations for contested cases, an evidentiary hearing is not required;
- 004.05(a) If there are no issues of material fact;
- 004.05(b) If an application for any form of benefit cannot be granted because it contains information showing on its face that the applicant does not meet statutory requirements for a benefit;
- 004.05(c) If an application for benefits is denied, or an approval revoked solely for failure to submit a complete information or other submission that is required as a condition for approval or continuing approval of a benefit;
- 004.05(d) If a petition for an appeal is received after the time for filing the appeal has expired so that a decision has become final.

005 Setting the Matter for Hearing:

- 005.01. Not later than 30 days after the Director has received the petition, the Director shall appoint a Hearing Officer to conduct a prehearing conference and a hearing and to submit to the Board a recommended decision. If the Director determines that the matter is one of significance and that it is a matter on which Board guidance is needed, the Director may alternatively appoint a Board member as hearing officer and the hearing shall be conducted before the Board.
- 005.02. The Hearing Officer shall not be:
- 005.02(a) A person who has served as investigator, prosecutor, or advocate in the contested case or its prehearing stage, nor may the hearing officer be advised or assisted by such a person;
- 005.02(b) A person who is subject to the authority, direction, or discretion of a person described in subsection 005.02A.
- 005.02(c) If all parties consent, a person as described in subsections 5005.02A or 005.02B may assist the hearing officer in the preparation of orders in the contested case.
- 005.02(d) A person who has participated in a determination of probable cause or other equivalent preliminary determination in a contested case may serve as hearing officer or assist or advise a hearing officer in the same proceeding.
- 005.02(e) A person may serve as hearing officer at successive stages of the same contested case.
- 005.03. Prehearing Procedures
- 005.03(a) Answer
- 005.03(a)(i) The Agency shall file an answer to the issues of fact and law raised in the petition within 45 days after the receipt of the petition.
- 005.03(a)(ii) The Agency shall serve the answer on all parties and the Hearing Officer personally or by first-class or certified mail.
- 005.03(b) Prehearing conferences and orders. A hearing officer designated to conduct a hearing may determine, pursuant to these rules, whether a prehearing conference will be conducted. After such a prehearing or if a prehearing conference is not held, the hearing officer shall issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

- 005.03(c) If a prehearing conference is conducted:
- 005.03(c)(i) The hearing officer shall promptly notify the agency of the determination that a prehearing conference will be conducted. The agency may assign another hearing officer for the prehearing conference, and;
 - 005.03(c)(ii) The hearing officer for the prehearing conference shall set the time and place of the conference and give reasonable written notice to all parties and to all persons who have filed written petitions to intervene in the matter. The agency shall give notice to other persons entitled to notice.
 - 005.03(c)(iii) The notice referred to in subsection 005.03Cii shall include the following:
 - 005.03(c)(iii)(a) The names and mailing addresses of all parties and other persons to whom notice is being given by the hearing officer;
 - 005.03(c)(iii)(b) The name, official title, mailing address, and telephone number of every counsel or employee who has been designated to appear for the agency;
 - 005.03(c)(iii)(c) The official file or retirement number, the name of the proceeding, and a general description of the subject matter;
 - 005.03(c)(iii)(d) A statement of the time, place, and nature of the prehearing conference;
 - 005.03(c)(iii)(e) A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;
 - 005.03(c)(iii)(f) The name, official title, mailing address, and telephone number of the hearing officer for the prehearing conference;
 - 005.03(c)(iii)(g) A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other stage of a contested case or who fails to make a good faith effort to comply with a prehearing order may be held in default under the Administrative Procedures Act; and
 - 005.03(c)(iii)(h) Any other matters that the hearing officer considers desirable.
 - 005.03(d) The hearing officer shall conduct a prehearing conference, as may be appropriate, to deal with such matters as exploration of settlement possibilities, preparation of stipulations, clarification of issues, rulings on identity and limitation of the number of witnesses, objections to proffers of evidence, determination of the extent to which direct evidence, rebuttal evidence or cross-examination will be presented in written form and the extent to which telephone, televisions, or other electronic means will be used as a substitute for proceedings in person, or of presentation of evidence and cross-examination, rulings

regarding issuance of subpoenas, discovery orders, and protective orders, and such other matters as will promote the orderly and prompts conduct of the hearing. The hearing officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

005.03(e) The hearing officer may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceedings while it is taking place.

005.04 Discovery in Contested Cases

005.04(a) The hearing officer or a designee, at the request of any party or upon the hearing officer's own motion, may issue subpoenas, discovery orders, and protective orders in accordance with the rules of civil procedure, except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court.

005.04(b) Any prehearing motion to compel discovery, motion to quash, motion for protective order or other discovery-related motion shall:

005.04(b)(i) Quote the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena or excerpt of a deposition.

005.04(b)(ii) State the reasons supporting the motion;

005.04(b)(iii) Be accompanied by a statement setting forth the steps or efforts made by the moving party or his or her counsel to resolve by agreement the issues raised and a statement that agreement has not been achieved; and

005.04(b)(iv) Be filed with the agency. The moving party shall serve copies of all such motions to all parties to the contested case.

005.04(c) Other than as it is provided in subsection 005.04B, discovery materials may be provided to the agency at the discretion of the hearing officer.

005.05 Continuances: The hearing officer may, in his or her discretion, grant extensions of time or continuances of hearings upon the hearing officer's own motion or at the timely request of any party for good cause shown. A party shall file a written motion for continuance that states in detail the reasons why a continuance is necessary and serve a copy of the motion on all other parties.

005.05(a) Good cause: Good cause for an extension of time or continuance may include, but is not limited to the following:

005.05(a)(i) Illness of the Party, legal counsel or witness;

005.05(a)(ii) A change in legal representation; or

005.05(a)(iii) Continuing good-faith settlement negotiations.

005.06. Informal Disposition: Unless otherwise precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default by any party.

006 Conducting Hearing in a contested case.

006.01. Determination of hearing formality: The hearing officer shall consult the parties and thereafter determine whether disposition shall be by a formal hearing, or

whether informal disposition of the matter is appropriate. If the hearing officer determines that a formal disposition is required the parties request it, or one or more of the parties request it, this section shall govern the hearing.

006.02. Order: If required pursuant to 006.01, the hearing shall be conducted in the following order:

006.02(a) The hearing is called to order by the hearing officer. Any preliminary motions, stipulations, or agreed orders are entertained.

006.02(b) Each party may be permitted to make an opening statement. Opening statements take place in the same order as the presentation of evidence.

006.02(c) Presentation of evidence.

006.02(c)(i) Evidence will be received in the following order:

006.02(c)(i)(a) Evidence is presented by the petitioner;

006.02(c)(i)(b) Evidence is presented by the Agency or respondent;

006.02(c)(i)(c) Rebuttal evidence is presented by the petitioner; and

006.02(c)(i)(d) Surrebuttal evidence is presented by the Agency or respondent.

006.02(c)(ii) With regard to each witness who testifies, the following examination may be conducted;

006.02(c)(ii)(a) Direct examination by the party who calls the witness;

006.02(c)(ii)(b) Cross-examination by the opposing party;

006.02(c)(ii)(c) Redirect examination by the party who called the witness; and

006.02(c)(ii)(d) Recross-examination by the opposing party.

006.02(d) After the evidence is presented, each party may have opportunity to make a closing argument. Closing arguments shall be made in the same order as the presentation of evidence. The hearing officer may request that the parties submit briefs in lieu of closing arguments.

006.03. Evidence

006.03(a) In contested cases, the hearing officer may admit and give to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs and may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

006.03(b) Any party to a hearing conducted pursuant to this section, from which a decision may be appealed to the courts of this state, may request that the agency and hearing be bound by the rules of evidence applicable in district court by delivering to the agency at least three days prior to the holding of the hearing a written request therefore. If the request is made, the hearing officer shall grant it as a matter of right, and the hearing officer shall conduct the hearing under the rules of evidence applicable in district court. Such request shall include the requesting party's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof, including the cost of court reporting services which the requesting party shall procure for the hearing.

- 006.03(c) Documentary evidence may be received in the form of copies or excerpts or incorporated by reference.
- 006.03(d) All evidence including records and documents in the possession of the agency of which it desires to avail itself shall be offered and made a part of the record in the case. No factual information or evidence other than the record shall be considered in the determination of the case.
- 006.03(e) A hearing officer or designee may administer oaths and issue subpoenas in accordance with the rules of civil procedure except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court.
- 006.03(f) The agency shall give effect to the rules of privilege recognized by law.
- 006.03(g) An agency may take official notice of cognizable facts and in addition may take official notice of general, technical, or scientific facts within its specialized knowledge and the rules and regulations adopted and promulgated by such agency.
 - 006.03(g)(i) Parties shall be notified either before or during the hearing or by references in preliminary reports, or otherwise, of the materials so noticed by the agency.
 - 006.03(g)(ii) Parties shall be afforded an opportunity to contest facts so noticed.
 - 006.03(g)(iii) The record shall contain a written record of everything officially noticed.
- 006.03(h) An agency may utilize its experience, technical competence and specialized knowledge in the evaluation of the evidence presented to it.
- 006.04 Conducting the hearing by electronic means. The hearing officer may conduct all or a part of the hearing by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in, to hear, and if technically feasible, to see the entire proceeding while it is taking place.
- 006.05 Official Record.
 - 006.05(a) The agency shall prepare an official record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe the record of the proceedings unless requested for purpose of rehearing, reference to the Board, or appeal pursuant to the Administrative Appeals Act. If these events occur, the transcript and record shall be furnished by the agency upon request and tender of the cost of preparation.
 - 006.05(b) An agency shall maintain an official record of each contested case under the Administrative Procedure Act for at least four years following the date of the final order.
 - 006.05(c) The agency record shall consist only of the following:
 - 006.05(c)(i) Notices of all proceedings;
 - 006.05(c)(ii) Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the agency pertaining to the contested case;
 - 006.05(c)(iii) The record of the hearing before the agency, including all exhibits and evidence introduced during such hearing, a

statement of matters officially noticed by the agency during the proceeding, and all proffers of proof and objections and rulings thereon; and

006.05(c)(iv) The final order, as adopted by the Board.

006.05(d) As provided in 53 NAC 4 Section 002.03, the hearing officer or the director or employee who is or reasonably may be expected to be involved in the decision making process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication as set for in that subsection shall make the appropriate filings which shall be included in the official record of the contested case.

006.05(e) Except to the extent that the Administrative Procedure Act or another statute provides otherwise, the agency record shall constitute the exclusive basis for agency action in contested cases under the act and for judicial review thereof.

006.06. Costs: All costs of a formal hearing shall be paid by the party or parties against whom a final decision is rendered.

007 Decision and Order in a Contested Case

007.01 Requirement for a Finding of Fact and Conclusions of Law: Every decision and order and order adverse to a party to the proceedings rendered by the Board on recommendation of the Hearing Officer shall be in writing or stated in the record and shall be accompanied by a findings of fact and conclusions of law, prepared by the Hearing Officer.

007.02 The decision and order shall include:

007.02(a) The name of the agency and the name of the proceeding;

007.02(b) The time and place of the hearing;

007.02(c) The names of all parties or their attorneys who entered an appearance at the hearing;

007.02(d) A “findings of fact” consisting of a concise statement of the conclusions on each contested issue of fact;

007.02(e) The “conclusions of law” consisting of the application of the controlling law to the facts found, and the legal results arising therefrom; and

007.02(f) The “order” consisting of the action taken by the agency as a result of the facts found and the legal conclusions arising therefrom.

007.03 Notification of Parties: Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or his or her attorney of record.

008 Appeals

008.01. Right of Appeal: Any person aggrieved by a final decision of the Board in a contested case is entitled to judicial review under the Administrative Procedure Act or to resort to such other means of review as may be provided by law.

008.02 Manner of Appeal: Parties desiring to appeal a Board decision shall file a petition for review in the district court of Lancaster County within thirty days

- after the service of the final decision by the Board. The thirty- day period for appeal commences to run from the date of mailing of the notice of order and decision to the parties or their attorneys of record. Service of the petition for review and summons must be made in accordance with Nebraska law.
- 008.03 Statutes Governing Appeal: Unless otherwise provided by statute, the procedures of Neb. Rev. Stat. § 84-917 govern the procedure for taking an appeal of a Board decision.
- 009 Prohibition against ex parte communications.**
- 009.01 Prohibition; when applicable. The prohibitions found in this section shall apply beginning at the time notice for hearing is given. An agency may designate an earlier time, but such earlier time shall be required to be set forth in the agency's rules of procedure.
- 009.02 Prohibitions; to whom applicable.
- 009.02(a) Parties and public. No party in a contested case or other person outside the agency having an interest in the contested case shall make or knowingly cause to be made an ex parte communication to the hearing officer or to the Director or employee who is or may be reasonably expected to be involved in the decisionmaking process of the contested case.
- 009.02(b) Persons in decisionmaking roles. No hearing officer or the director or employee who is or may be reasonably be expected to be involved in the decisionmaking process of the contested case shall make or knowingly cause to be made an ex parte communication to any party in a contested case or other person outside the agency having an interest in the contested case.
- 009.02(c) Investigators. No agency head or employee engaged in the investigation or enforcement of a contested case shall make or knowingly cause to be made an ex parte communication to a hearing officer or agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the contested case.
- 009.03 Disclosure of contacts. The hearing officer or agency head or employee who is or may be reasonably expected to be involved in the decisionmaking process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication set forth in subsections 009.01 to 009.003 shall file in the record of the contested case:
- 009.03(a) All such written communications;
- 009.03(b) Memoranda stating the substance of all such oral communications; and
- 009.03(c) All written responses and memoranda stating the substance of all oral responses to all the ex parte communications.
- 009.03(d) The filing shall be made within two working days of the receipt or making of the ex parte communication. Notice of the filing, with an opportunity to respond, shall be given to all parties of record.
- 009.03(e) Filing and notice of filing provided under subsection 009.03 shall be considered on the record and reasonable notice for purposes of the definition of ex parte communications.

Enabling Legislation: Neb. Rev. Stat. § 23-2305.01
 Neb. Rev. Stat. § 24-704.01
 Neb. Rev. Stat. § 79-904.01
 Neb. Rev. Stat. § 79-950
 Neb. Rev. Stat. § 81-2019.01
 Neb. Rev. Stat. § 84-909
 Neb. Rev. Stat. § 84-909.01
 Neb. Rev. Stat. § 84-1305.02
 Neb. Rev. Stat. § 84-1503

TITLE 303: PUBLIC EMPLOYEES RETIREMENT BOARD

CHAPTER 14 - RETIREMENT OPTION CHANGE

Current with amendments through Update #277, dated April 22, 2002.

001 When Retirement Option Changes Can Be Made

- 001.01 Members of the Judges, Patrol and School Retirement Systems may change their retirement option selection UNTIL the effective date of retirement.
- 001.02 Members of the County and State Retirement Systems may change their option selection UNTIL the documentation has been forwarded to the annuity provider for payment.

Enabling Legislation: Neb. Rev. Stat. § 23-2305 (1987)
 Neb. Rev. Stat. § 24-704 (Supp. 1988)
 Neb. Rev. Stat. § 79-1503 (1987)
 Neb. Rev. Stat. § 81-2019 (Supp. 1988)
 Neb. Rev. Stat. § 84-1305 (1987)
 Neb. Rev. Stat. § 84-1503 (Supp. 1988)

TITLE 303: PUBLIC EMPLOYEES RETIREMENT BOARD

CHAPTER 15 - REGULATIONS GOVERNING THE PUBLIC EMPLOYEES RETIREMENT SYSTEMS -PURCHASE OF SERVICE

Current with amendments through Update #277, dated April 22, 2002.

001 **General**

The provisions of this regulation apply to members of the Nebraska Retirement Systems which are the Judges, State Patrol and School Retirement Systems and the State and County Employees Retirement Systems.

- 001.01 The Nebraska Public Employees Retirement Systems, referred to as the Retirement Office, is the agency under the direction of the Public Employees Retirement Board, referred to as the Retirement Board, which is responsible for administering the various purchase of service provisions in the statutes governing the Nebraska Retirement Systems.
- 001.02 For purposes of determining eligibility for purchase of service, a member, school employee, officer or judge shall mean a person working for a covered employer and contributing to their respective retirement systems.
- 001.03 Covered employer for purposes of this regulation shall mean any Nebraska public school, Classes I to IV and VI; participating county; or participating state agency.
- 001.04 The interest rate used to determine the one-time cost of purchasing service shall be the annual rate of regular interest accrued on member accounts as determined annually for each retirement system by the Retirement Board. If the member is required to pay the actuarial cost as determined by the actuarial assumptions of each plan, the actuarial determination shall apply. If payments are made on the installment method an additional finance charge will be assessed as defined.
- 001.05 Actuarial cost shall mean the full cost of purchasing service allowed by law as determined by the actuary under contract with the Retirement Board for the State. The full cost of purchasing service shall be calculated based on the increase in the actuarial accrued liability resulting from the purchase of service assuming the member is actively employed until age 65. The actuarial assumptions used when determining the cost shall be those adopted by the Retirement Board for the School Retirement System as recommended by the actuary.
- 001.06 For purposes of determining the last date a member must complete a purchase of service the date of employment, reemployment or membership shall mean the first date contributions are posted to a member's account after his/her employment or reemployment.
- 001.07 The first notice of the intent of a member to make a purchase of service must be in writing and received in the Retirement Office no later than the member's third anniversary of the date of employment, reemployment, or membership, as required by law. Notice will be deemed received if postmarked by the applicable deadline.
- 001.08 All payments for purchase of service must be received in the Retirement Office no later than the last working day of the month containing the member's fifth anniversary of their date of employment, reemployment or membership, or prior

to retirement, whichever is first. Payment will be deemed received if postmarked by the last day of that same month.

- 001.09 For purposes of this regulation, employment shall mean the initial date of hire by a covered employer. Reemployment shall mean being rehired by a covered employer after having terminated employment. Termination of employment means the date on which the member leaves the employ of a covered employer ending the employee-employer relationship. Termination of employment for school employees does not include ceasing active work at the end of the school year if the member will return to active work during the following school year with any covered employer under the Nebraska School Retirement System.
- 001.10 In addition to the notice of a member's intent to purchase service, a detailed application to purchase service must be completed, on a form prescribed by the Retirement Office, before actual payments will be accepted. To allow sufficient processing time before the statutory deadline for payments, the application should be received no later than 90 calendar days prior to the last day of the month containing the fifth anniversary of the date of employment, reemployment or membership, as defined.
- 001.11 In no case shall service credit be granted until all payments for the purchase of that service have been completed, except as specifically provided under Title 303.
- 001.12 Code shall mean the Internal Revenue Code of 1986, as amended.
- 001.13 Code section 415 defined contribution limits shall apply to all after- tax payments made for purchases of service except for payments to repay original after-tax, mandatory contributions withdrawn for service years prior to January 1, 1986, for members of the Nebraska School Retirement System and for service years prior to January 1, 1985, for members of the Judges and State Patrol Systems.

002 Repayment Of Refund (School, Judges and State Patrol Only)

- 002.01 All general provisions in Section 001 and methods of purchasing service as defined in Section 006 in this regulation will apply to repayment of a refund.
- 002.02 The cost of repaying a refund includes member contributions for service years being purchased and regular interest that would have been accrued on those contributions.
- 002.03 Before the repayment of a refund will be processed by the Retirement Office, the member's service and compensation must be verified by the covered employer on forms prescribed by the Retirement Office.
- 002.04 Code section 415 defined contribution limits for member after-tax, mandatory contributions for service will not apply to the purchase of service for years prior to January 1, 1986, for school members and January 1, 1985, for judges and state patrol members.

003 Out-of-State Service (School Plan Members Only)

- 003.01 For purposes of this regulation, out-of-state service shall mean creditable service rendered in public schools in another state or schools in this state covered by the school retirement system established pursuant to section 79-979 of the Nebraska Revised Statutes and subject to the limitations established by law.

- 003.02 All general provisions in Section 001 and methods of purchasing service as defined in Section 006 of this regulation will apply to the purchase of out-of-state service.
- 003.03 Service and compensation for the out-of-state service must be verified on forms prescribed by the Retirement Office before the actual cost of purchase can be determined.
- 003.04 (i) The cost of purchasing out-of-state service includes member contributions that would have been required for service years being purchased and the regular interest that would have been accrued on those contributions unless subsection (ii) of this section applies.
(ii) The cost of purchasing out-of-state service for any member hired or rehired after July 19, 1996, is the actuarial cost of the service to be purchased.
- 003.05 A member's out-of-state service credit may not exceed the amount of service credit the member actually accrues as a school employee in the State of Nebraska. When a member who has purchased out-of-state service credit ceases employment and applies for monthly retirement benefits, the years of service credit attributable to in-state service with a covered employer shall be compared with the years of out-of-state service credit that were purchased. If the years of out-of-state service by the member exceed the years of the member's in-state service, the excess years of out-of-state service will be eliminated in determining the member's benefits under the Retirement System. The member, if under contract or employed by a covered employer on or after July 19, 1996, shall receive a refund of the cost of the out-of-state service which had been purchased by the member but which is eliminated under this regulation. The refund shall be calculated by eliminating the first chronological years of out-of-state service that were purchased, and continuing with immediately succeeding years of out-of-state service, until the required amount of out-of-state service which must be eliminated has been met. The dollar amount of the refund shall be the actual purchase cost paid by the member for the years of out-of-state service which are eliminated under this regulation. No interest shall be paid on the refund.
- 003.06 Fractional years of out-of-state service for a member of the Nebraska School Retirement System may be purchased provided the existing Nebraska public school service for that year equals one-half or more of a year of service, as defined by law.
- 003.07 When determining the code section 415 benefit limits at the time a member commences benefit payments, the high three, consecutive years of section 415 compensation must be compensation from the covered employer. This means the out-of-state compensation cannot be used to determine the limit.

004 Leave of Absence (School Plan Members Only)

- 004.01 All general provisions in Section 001 and methods of purchasing service as defined in Section 006 of this regulation will apply to the purchase of service for a leave of absence, as defined by law.
- 004.02 Verification of the leave, as approved by the school, and the member's compensation immediately prior to the leave must be received by the Retirement Office before the actual cost of purchase can be determined.
- 004.03 (i) The cost of purchasing service credit for a leave of absence includes member and school district contributions that would have been made during the

- period of leave had the member been actively working in a public school, based on the compensation immediately prior to the leave, plus the regular interest that would have accrued on those contributions unless subsection (ii) of this section applies.
- (ii) The cost of purchasing service credit for a leave of absence, for a member hired or rehired after July 19, 1996, is the actuarial cost of the service to be purchased.

005 Military Service Credit (State and County Plan Members Only)

- 005.01 At the time a military leave commences the covered employer and/or the member must notify the Retirement Office in writing of the leave and the expected length of the leave.
- 005.02 The covered employer may require the member to indicate in advance and to notify the Retirement Office if the member intends to purchase the military service at the time of his/her return to work. This advance election shall not be binding on the member.
- 005.03 All general provisions in Section 001, unless otherwise stated in this section, and all methods of purchasing service as defined in Section 006 of this regulation will apply to the purchase of military service credit.
- 005.04 An election to purchase the military service is to be made in writing to the Retirement Office within one year from the date of reemployment. An application form prescribed by the Retirement Office must be filed before payments can be received by the office.
- 005.05 Verification of the beginning and ending dates of a member's military leave as well as the applicable compensation, must be received by the Retirement Office before actual payments can be made by the member.
- 005.06 The cost of the purchase of the military leave to the member will be the amount of contributions the member would have made had the member been continuously employed during the leave. For purposes of the member and employer contributions under this section, the member's compensation during the period of military service shall be the rate the member would have received but for the military service or, if not reasonably determinable, the average rate the member received during the twelve-month period immediately preceding military service. When a member has completed the purchase of service the covered employer will be billed for the matching employer contribution amount, as required by law. If the member chooses to use the payroll deduction method the employer may match the member contribution month by month. There will be no interest or late fees charged to the member or the employer for the purchase of military service credit.
- 005.07 The deadline for completing the purchase of military service credit under federal law will apply. This deadline is three times the member's service in the military, not to exceed five years.

006 Payment Methods

- 006.01 Installment Method
- (i) In all cases, except for eligible rollover distributions, payments shall be on an after-tax basis and subject to the code section 415 defined

contribution annual limits. If the contributions qualify as a repayment of original after-tax, mandatory contributions as described under section 002 of this regulation the section 415 limits do not apply.

- (ii) Before payments can be accepted for purchase of service each year during the installment period, the member must substantiate his or her current compensation in such manner as may be required by the Retirement Office. At the end of each calendar year the actual code section 415 compensation for that year must be verified by the covered employer as a condition of final acceptance of that year's installments and to assure the payments did not cause the member to exceed the code section 415 limits. If the covered employer's verification establishes that the member's payment for purchase of service in that year exceeds the code section 415 limit, the excess shall be refunded to the employee and subsequent installments adjusted accordingly. In all events the service that is credited to the member shall be adjusted if necessary to reflect any limitations under code section 415 on the amount of installment payments which can be accepted from the member.
- (iii) All members eligible for purchase of service electing to use the installment method must sign an irrevocable agreement stipulating the method of settlement to be used if the installment payments are not completed due to death, a disability which requires the member to cease employment, or ceasing covered employment.
- (iv) The finance interest rate used for installment payments shall be the actuarial interest rate assumption based on the expected long-term rate of return for each plan, recommended by the actuary and adopted by the Retirement Board.
- (v) A member may elect to purchase service through payroll deduction pursuant to an irrevocable payroll deduction agreement with the member's employer which authorizes the employer to deduct the payment from the employee's compensation. One copy of the agreement must be on file with the employer and one copy with the Retirement Office before payments may begin.
- (vi) In the event a member elects to purchase service by payroll deduction, the covered employer shall be responsible for making timely remittances of the member contributions for the service purchase.
- (vii) Direct installment payments made to the Retirement Office by the member (other than through payroll deduction) must be by cashier's check, bank draft or money order. Personal checks will not be accepted.
- (viii) A late fee may be charged when direct payments are not received by the payment deadline. The fee will be based on the finance interest rate as defined by this section. There will be no late fee assessed for the purchase of military service for state and county members as required by federal law.

006.02 Rollovers

- (i) Consistent with the Code, the Retirement Office will accept rollovers in payment for lump-sum purchases of service credit, provided the money is an eligible rollover distribution received from one of the following:
 - (a) A code section 401(a) tax qualified plan
 - (b) A code section 403(a) qualified annuity plan
 - (c) A code section 408(a) individual retirement account (IRA) or a code section 408(b) individual retirement annuity, but only if the IRA is a

conduit or holding account IRA or annuity, containing amounts from a code section 401(a) tax qualified plan or a code section 403(a) annuity plan and does not contain any other types of funds. An IRA which is established and/or funded with other money is not an eligible conduit or IRA annuity.

- (d) The member, if the amount was distributed to the member from a code section 401(a) or code section 403(a) qualified plan and is rolled over by the member to the Nebraska Retirement Systems within 60 days of that distribution, and if the member's payment is accompanied by proof, satisfactory to the Retirement Office, of rollover eligibility. (Personal checks will not be accepted) Distributions from a code section 403(b) tax- sheltered annuity or custodial account may not be rolled over to the Nebraska Retirement Systems. Also, distributions from a code section 457 deferred compensation plan for governmental and tax-exempt agencies may not be rolled over to the Nebraska Retirement Systems.
- (ii) The retirement plan transferring the rollover distribution to the Nebraska Retirement Systems, on behalf of the member, must verify in writing the plan is a tax-qualified plan in advance of the payment. In no event shall any after-tax amounts be transferred to the Retirement Office.
- (iii) If the rollover is being made from an IRA, verification from the sponsoring institution will be required to assure the Retirement Office the money being transferred is an eligible rollover distribution, as defined.
- (iv) A direct rollover payment for purchase of service may be made by check from the transferring institution to the Nebraska Retirement Systems, or a check delivered to the member but negotiable only by the Nebraska Retirement System will be accepted as a direct rollover.
- (v) The amount of the rollover payment accepted by the Nebraska Retirement System will be based on the cost of the service purchased and determined only by the Retirement Office. Funds in excess of the actual purchase cost will not be accepted.
- (vi) All other federal tax laws governing eligible rollover distributions shall apply.

006.03 Lump Sum Payments

- (i) A lump sum payment is a one-time, direct payment by the member for the purchase of eligible service credit.
- (ii) In all cases, except for eligible rollover distributions, the payment shall be on an after-tax basis and subject to the code section 415 defined contribution annual limits. If the contributions qualify as a repayment of original after-tax, mandatory contributions as described under section 002 of this regulation the code section 415 limits do not apply.
- (iii) Before a lump sum payment can be accepted as a purchase of service, the member must substantiate their current compensation in such a manner as may be required by the Retirement Office. At the end of the calendar year the actual code section 415 compensation for that year must be verified by the covered employer as a condition of final acceptance and to assure the payment did not cause the member to exceed the code section 415 limits. If the covered employer's verification establishes that the

member's payment for purchase of service exceeds the code section 415 limits, the excess shall be refunded to the employee and the service credit adjusted accordingly.

- (iv) If a member elects to purchase service by lump sum and such purchase exceeds the annual code section 415 limits, the member will be permitted to make payments in immediate succeeding periods to complete the member's purchase of service. Members who are unable to make a lump sum payment due to the limitations of code section 415 may be required by the Retirement Office to use the installment method to complete the payments.
- (v) Payments will only be accepted via cashier's check, bank draft or money order. Personal checks will not be accepted as payment.

Enabling Legislation: Neb. Rev. Stat. § 23-2305, 23-2323.01 to 23- 2323.03
Neb. Rev. Stat. § 24-704, 24-710.05, 24-710.06
Neb. Rev. Stat. § 79-904, 79-933.01 to 79-933.07
Neb. Rev. Stat. §79-936, 79-937.
Neb. Rev. Stat. § 81-2019, 81-2031
Neb. Rev. Stat. § 84-1305, 84-1325, 84-1312, 84-1313
Neb. Rev. Stat. § 84-1503

TITLE 303: PUBLIC EMPLOYEES RETIREMENT BOARD

CHAPTER 16 - SERVICE AS A JUDGE

Current with amendments through Update #277, dated April 22, 2002.

001 When Is Credit Allowed For Service

Current service as a judge shall be included in the “total service” as a judge provided contributions have been made by the judge to retirement for each year of service. (Prior and military service are allowed without payment of contributions, provided the conditions under law are met.)

Years of employment as a judge beyond the number required by law to reach the maximum benefit level will not be included in “total service” unless the maximum benefit level is raised by the Legislature and additional contributions are made by the judge for the years worked, up to the new maximum benefit level.

Enabling Legislation: Neb. Rev. Stat. § 24-701 (6)
 Neb. Rev. Stat. § 24-703 (2)
 Neb. Rev. Stat. § 24-710 (2)

TITLE 303: PUBLIC EMPLOYEES RETIREMENT BOARD

CHAPTER 17 – REGULATIONS GOVERNING THE PUBLIC EMPLOYEES RETIREMENT SYSTEMS ADMINISTRATION OF INTERNAL REVENUE SERVICE CODE SECTION 415 AND MAXIMUM COMPENSATION LIMITS.

Current with amendments through Spring 2002.

001 **Definitions:**

- 001-0: Code means the Internal Revenue Code, as amended;
- 001-02 Defined Contribution Plan means the Retirement Plan for Nebraska Counties and the State Employees Retirement Plan;
- 001-03 Defined Benefit Plan means the Nebraska Judges Retirement Fund, the Nebraska State Patrol Retirement Plan, and the School Employees Retirement Plan of the State of Nebraska;

002 **Defined Contributions Plan 415 Limitations:**

- 002-01 Maximum annual addition: The annual addition that may be contributed or allocated to a member's account under a defined contribution plan for any limitation year beginning on or after December 31, 2001 shall not exceed the lesser of:
 - 002-01(a) \$40,000, as adjusted for increases in the cost-of-living under section 415(d) of the Code, or
 - 002-01(b) 100 percent of the member's compensation, within the meaning of section 415(c)(3) of the Code, for the limitation year.
- 002-02 Maximum compensation amount for employees hired on or after January 1, 1996: The annual compensation of each member hired on or after January 1, 1996 taken into account in determining allocations for any plan year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.
- 002-03 Maximum compensation amount for employees hired on or before December 31, 1995: The annual compensation of each member hired on or before December 31, 1995 taken into account in determining allocations for any plan year beginning after December 31, 2001 shall not exceed the amount which was allowed to be taken into account under the retirement plans as in effect on July 1, 1993, which was \$ 235,840, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

- 003-01 Defined benefit dollar limitation. With respect to the defined benefit plans, the “defined benefit dollar limitation” is \$160,000, as adjusted, effective January 1 of each year, under section 415(d) of the Code in such manner as the United States Secretary of the Treasury shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies.
- 003-02 Maximum permissible benefit: The “maximum permissible benefit” in the defined benefit plans is the lesser of the defined benefit dollar limitation or the defined benefit compensation limitation (both adjusted where required, as provided in (a) and, if applicable, in (b) or (c) below).
- (a) If the member has fewer than 10 years of participation in a defined benefit plan, the defined benefit dollar limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of participation in the plan and (ii) the denominator of which is 10. In the case of a member who has fewer than 10 years of service in the plans, the defined benefit compensation limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of service with the employer and (ii) the denominator of which is 10.
 - (b) If the benefit of a member begins prior to age 62, the defined benefit dollar limitation applicable to the member at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the member at age 62 (adjusted under (a) above, if required). The defined benefit dollar limitation applicable at an age prior to age 62 is determined as the lesser of (i) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in the following sections of the plans §§ 24-701, 79-902, 81-2014, and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5-percent interest rate and the applicable mortality table as defined in the following sections of the plans §§ 24-701, 79-902, 81-2014. Any decrease in the defined benefit dollar limitation determined in accordance with this paragraph (b) shall not reflect a mortality decrement if benefits are not forfeited upon the death of the member. If any benefits are forfeited upon death, the full mortality decrement is taken into account.
 - (c) If the benefit of a member begins after the member attains age 65, the defined benefit dollar limitation applicable to the member at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the member at age 65 (adjusted under (a) above, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age 65 is determined as (i) the lesser of the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or

other tabular factor) specified in the following sections of the plans §§ 24-701, 79-902, 81-2014 and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5-percent interest rate assumption and the applicable mortality table as defined in the following sections of the plans §§ 24-701, 79-902, 81-2014. For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored.

003-03 Benefit Increases: Benefit increases resulting from the increase in the limitations of section 415(b) of the Code shall be provided to all current and former members (with benefits limited by section 415(b)) who have an accrued benefit under the plans immediately prior to the effective date of this section (other than an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations under section 415(b)).

003-04 Increase in Compensation Limit for Members hired on or after July 1, 1996:

- (a) Increase in limit. The annual compensation of each member hired on or after July 1, 1996 taken into account in determining benefit accruals in any plan year beginning after December 31, 2001 shall not exceed \$200,000. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). For purposes of determining benefit accruals in a plan year beginning after December 31, 2001, compensation for any prior determination period shall be limited as provided by the employer in the adoption agreement.
- (b). Cost-of-living adjustment. The \$200,000 limit on annual compensation in paragraph (a) shall be adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

003-05 Increase in Compensation Limit for Members hired on or before June 30, 1996:

- (a) The annual compensation of each member hired on or before June 30, 1996 taken into account in determining benefit accruals in any plan year beginning after December 31, 2001, shall not exceed the amount which was allowed to be taken into account under the retirement plans as in effect on July 1, 1993, which was \$ 235,840. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). For purposes of determining benefit accruals in a plan year beginning after December 31, 2001, compensation for any prior determination period shall be limited as provided by the employer in the adoption agreement.
- (b) Cost-of-living adjustment; The limit set forth in paragraph (a) on annual compensation shall be adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

003-06 Compensation Limit for Prior Determination Periods: In determining benefit accruals in plan years beginning after December 31, 2001, the annual compensation limit in paragraph (a) of Section 003-04, Increase in Compensation Limit, for determination periods beginning before January 1, 2002, shall be \$200,000.

Enabling Legislation:

Federal Legislation: I.R.C. § 401

I.R.C. § 415

State Legislation:

[County] Neb. Rev. St. § 23-2301

Neb. Rev. St. § 23-2305

[Judges] Neb. Rev. St. § 24-701

Neb. Rev. St. § 24-704

[School] Neb. Rev. St. § 79-902

Neb. Rev. St. § 79-904

[State Patrol] Neb. Rev. St. § 81-2014

Neb. Rev. St. § 81-2019

[State] Neb. Rev. St. § 84-1301

Neb. Rev. St. § 84-1305

[PERB] Neb. Rev. St. § 84-1503

TITLE 303: PUBLIC EMPLOYEES RETIREMENT BOARD

CHAPTER 18 - REGULATIONS GOVERNING THE PUBLIC EMPLOYEES RETIREMENT SYSTEMS—BENEFIT AND CONTRIBUTION ADJUSTMENTS

Current with amendments through Update #277, dated April 22, 2002.

001 **General**

The provisions of this regulation apply to the Nebraska School Retirement System, the Nebraska State Employees Retirement System, the Retirement System for Nebraska Counties, the Nebraska Retirement Fund for Judges, and the Nebraska State Patrol Retirement System. This regulation sets forth the procedures by which the Nebraska Public Employees Retirement System shall adjust member benefits and employee and employer contributions as necessary to comply with Nebraska and federal laws governing public employee retirement plans.

002 **Definitions**

- 002.01 Board means the Public Employees Retirement Board established pursuant to Nebraska Revised Statute section 84-1501.
- 002.02 NPERS means the Nebraska Public Employees Retirement System which is the agency that administers the retirement laws under the direction of the Board.
- 002.03 Benefit means the post-retirement income to be received by a member of a retirement system.
- 002.04 Employee Contribution means the dollar amount required to be deducted from an active member's compensation for deposit into a retirement system to fund member benefits.
- 002.05 Employer means the public entity required to contribute to the Nebraska State Employees Retirement System, the Retirement System for Nebraska Counties, the Nebraska Retirement Fund for Judges, the Nebraska School Retirement System, or the Nebraska State Patrol Retirement System on behalf of its employees who are members in such retirement system.
- 002.06 Employer Contribution means the dollar amount required to be deposited into a retirement system by an employer to fund member benefits.
- 002.07 Excess Contribution means an employee contribution or employer contribution, or both, that is (a) greater than the statutorily mandated deduction from compensation, (b) greater than the statutorily mandated matching contribution required of an employer, (c) submitted on behalf of an employee that is ineligible to participate in the retirement system, or (d) improperly calculated on wages or salary representing compensation for unused sick leave or unused vacation leave converted to cash payments, insurance premiums converted into cash payments, reimbursement for expenses incurred, fringe benefits, or bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, except for retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements.
- 002.08 Insufficient Contribution means an employee contribution or employer contribution, or both, which is (a) less than the statutorily mandated deduction

from compensation, (b) less than the statutorily mandated matching contribution required of an employer, (c) not timely remitted, (d) not remitted due to administrative errors on the part of the employer, (e) not remitted due to the failure of the employer to enroll the employee in the retirement system when such employee was required to be enrolled, or (f) due to a retroactive salary payment paid pursuant to court order, arbitration, or litigation and grievance settlements.

002.09 Member means an individual who has an account in one of the retirement systems.

002.09(a) Active Member means an individual who is currently employed by an employer and making employee contributions into a retirement system.

002.09(b) Inactive Member means an individual who has made employee contributions to a retirement system as an active member and has subsequently separated from service with an employer.

002.10 Retirement System means the Nebraska State Employees Retirement System, the Retirement System for Nebraska Counties, the Nebraska Retirement Fund for Judges, the Nebraska School Retirement System, or the Nebraska State Patrol Retirement System, as appropriate under the circumstances.

003 Excess Contributions

003.01 If NPERS determines that a retirement system has received an excess employee contribution, NPERS shall return the excess employee contribution to the employer, and the employer shall return the excess employee contribution to the employee.

003.02 If NPERS determines that a retirement system has received an excess employer contribution, NPERS shall credit the excess employer contribution against future employer contributions. Adjustments due to excess employer contributions shall be made within one year of the date the excess contribution was received by NPERS. If more than one year has passed since the date the contribution was received, the excess contribution shall not be adjusted.

004 Insufficient Contributions

004.01 Active Members

(i) If NPERS determines that a retirement system has received insufficient contributions from an active member or employer, or both, NPERS shall require the member and/or the employer to remit additional contributions.

(ii) Except as provided in 004.01(iii), additional employee contributions required under this regulation shall be picked up by the employer through an irrevocable payroll deduction authorization, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code. The employer shall pay these employee contributions from the same source of funds which is used in paying earnings to the employee.

(iii) Any contributions pertaining to plan years prior to January 1, 1986 shall be paid using after tax moneys.

- (iv) The additional employee contributions required pursuant to this regulation shall be deducted from the employee's compensation in equal installments over a period of time selected by the employee; provided, however, that such time period shall not exceed the lesser of (a) four times the number of pay periods over which the error occurred or (b) five years.
- (v) Any additional employer contribution which is dependent upon an additional employee contribution shall be made in conjunction with the employee contribution.
- (vi) All active members utilizing the installment method of repayment must sign an irrevocable agreement stipulating the method of settlement to be used if the installment payments are not completed due to death, a disability which requires the member to cease employment, or ceasing covered employment.

004.02 Inactive Members

- (i) If NPERS determines that an inactive member has made insufficient contributions, the retirement benefits of the inactive member shall be reduced by the actuarial equivalent value of the omitted employee contributions, with interest.
- (ii) If NPERS determines that a retirement system has received insufficient contributions from an employer of an inactive member, NPERS shall require the employer to remit additional contributions as necessary to make up the insufficient employer contribution.

005 Overpayment of Benefits

005.01 If NPERS determines that any member has received a retirement benefit that is in excess of the retirement benefit such member is entitled to receive under the governing statutory provisions, NPERS shall offset future benefits as necessary to recoup the overpayment, with interest. In lieu of future offsets, the member may repay the overpayment immediately, with interest.

005.02 Reductions in future benefit payments pursuant to this regulation shall not exceed twenty-five (25) percent of the monthly retirement benefit received by the member unless the member agrees, in writing, to a greater offset.

006 Underpayment of Benefits

006.01 If NPERS determines that any member has received a retirement benefit that is less than the retirement benefit such member is entitled to receive under the governing statutory provisions, NPERS shall immediately make payment equal to the deficit amount plus interest.

007 Interest

007.01 Interest shall be assessed and collected by NPERS from any employer who submits an insufficient contribution. Interest shall be calculated from the date the contribution was due to be remitted to NPERS until the date such contribution is remitted.

007.02 The rate of interest to be assessed on insufficient contributions, repayment of excess benefits, or paid to the member on account of deficient benefit payments,

shall be the rate of regular interest as defined or determined under the County Employees Retirement Act, the Judges Retirement Act, the School Employees Retirement Act, the Nebraska State Patrol Retirement Act, or the State Employees Retirement Act, as appropriate.

008 Notice of Adjustment

- 008.01 Before NPERS makes any adjustment pursuant to these regulations, NPERS shall mail notice of the proposed adjustment to the member, the employer, or any other person affected by such adjustment.
- 008.02 The notice required by this regulation shall be mailed by certified mail, return receipt requested, to the last known address of the member, employer, or other affected person as reflected by the records of NPERS.
- 008.03 All notices of proposed adjustments shall advise the affected parties of their right to protest and appeal the proposed adjustment and the right to a formal hearing before the Board or its designated hearing officer.

009 Appeals

- 009.01 If a member, employer, or any other person affected by a proposed adjustment feels that such proposed adjustment is erroneous or improper, such member, employer, or other person may file a request for hearing. If the member, employer, or other affected person files a protest within 30 days of the date notice of the proposed adjustment was mailed, NPERS shall suspend making the adjustment until after the formal hearing and a final decision is rendered by the Board. If no protest and request for hearing is received by NPERS within such 30 day period, NPERS shall proceed to make the adjustment.
- 009.02 All hearings shall be held in accordance with the appeal procedures established by the Board under **Title 303**, Chapter 12, and the Administrative Procedures Act.

010 Statute of Limitations

- 010.01 Every claim and demand under these regulations and against NPERS or the Board shall be forever barred unless the action is brought within two years of the time at which the claim accrued.

Enabling Legislation: Neb. Rev. Stat. §§ 23-2301, 23-2305, 23-2305.01, 23-2307, 23-2310.01, 23-2310.02, 23-2317, 23-2330.01,
Neb. Rev. Stat. §§ 24-701, 24-703, 24-703.01, 24-703.02, 24-704, 24-704.01, 24-710, 24-711, 24-713.01,
Neb. Rev. Stat. §§ 79-902, 79-904, 79-904.01, 79-905, 79-933, 79-934, 79-936, 79-937, 79-940, 79-950, 79-958, 79-959, 79-960, 79-977.01,
Neb. Rev. Stat. §§ 81-2014, 81-2017, 81-2019, 81-2019.01, 81-2026, 81-2027 through 81-2027.04, 81-2037,
Neb. Rev. Stat. §§ 84-1301, 84-1305, 84-1305.02, 84-1308, 84-1311.01, 84-1311.02, 84-1319, 84-1329,
Neb. Rev. Stat. §§ 84-1501 and 84-1503.

TITLE 303: PUBLIC EMPLOYEES RETIREMENT BOARD

CHAPTER 20 - INVESTMENT ALLOCATIONS AND TRANSFERS—RETIREMENT SYSTEM FOR NEBRASKA COUNTIES AND STATE EMPLOYEES RETIREMENT SYSTEM OF THE STATE OF NEBRASKA, DEFINED CONTRIBUTION BENEFIT

001 **Scope of this rule:**

The provisions of this rule apply only to those members of the Retirement System for Nebraska Counties and the State Employees Retirement System who participate in the Plans' defined contribution benefit. This rule shall not govern the members of the plans who participate in the cash balance benefit.

002 **Allocation and Transfer of Employee Contributions**

- 002.01 Members of the Retirement System for Nebraska Counties and members of the State Employees Retirement System of the State of Nebraska who participate in the defined contribution benefit may allocate their employee contributions and/or transfer any portion of their employee account funds to the various investment options available under the retirement systems in increments of five percent in any proportion, including full allocation and/or transfer to any one option.
- 002.02 The percentage of employee contributions allocated and/or transferred to the various investment options may be changed by the member via telephone call to the voice response unit, via a secure electronic communications if sufficient proof of the member's identity is established through a personal identification number (PIN) or other industry accepted means of verification, or via written request on forms prescribed by the Nebraska Public Employees Retirement Systems. Change requests received on a business day will normally be processed as of that business day if received prior to 3:00 p.m. C.S.T. (or C.D.S.T., if applicable). Change requests received after that time or on a non-business day will normally be processed the next business day.
- 002.03 Funds invested in the stable return account shall be subject to restrictions on transfers depending upon the availability of liquid funds in such account. The Public Employees Retirement Board shall establish a percentage available for transfer each calendar quarter based upon information, advice and recommendations provided by the state investment officer. The percentage established by the Board shall be an amount which will permit the greatest amount of flexibility for all members of the retirement system whose contributions were invested in the stable return account to transfer funds out of the stable return account. Such percentage shall be limited as necessary to prevent members from incurring any surrender charges or other penalties for early termination of the guaranteed investment contracts into which such funds were invested.
- 002.04 Members shall not make direct transfers from the stable return account to the money market account or any comparable investment option established by the Board. Members wishing to move their funds between these accounts shall first

pass them through one of the non-competing equity investment account options. The transferred funds must remain in a non-competing equity investment account for a minimum of three months.

003 Allocation and/or Transfer of Employer Contributions

- 003.01 Members of the Retirement System for Nebraska Counties and members of the State Employees Retirement System of the State of Nebraska who participate in the defined contribution benefit may allocate their employer contributions and/or transfer any portion of their employer account funds among the three investment options available under the retirement systems in increments of five percent in any proportion, including full allocation and/or transfer to any one option.
- 003.02 The percentage of employer contributions allocated and/or transferred to the three investment options may be changed via a telephone call to the voice response unit, via a secure electronic communication if sufficient proof of the member's identity is established through a personal identification number (PIN) or other industry accepted means of verification, or via written request on forms prescribed by the Nebraska Public Employees Retirement Systems. Change requests received on a business day will normally be processed as of that business day if received prior to 3:00 p.m. C.S.T. (or C.D.S.T., if applicable). Change requests received after that time or on a non-business day will normally be processed the next business day.

Enabling Legislation:

County Plan Provisions: §§ 23 2301, 23 2305, 23 2309.01, 23 2310, 23 2310.03, 23 2310.05, 23 2330.02
State Plan Provisions: §§ 84 1301, 84 1305, 84 1309, 84 1309.01, 84 1310.01, 84 1311, 84 1311.03, 84 1329.04
PERB Provisions: § 84 1503

TITLE 303: PUBLIC EMPLOYEES RETIREMENT BOARD

CHAPTER 21 - QUALIFIED DOMESTIC RELATIONS ORDERS

Current with amendments through Update #277, dated April 22, 2002.

001 General

This regulation sets forth the procedures of the Nebraska Public Employees Retirement Systems (NPERS) for the administration of qualified domestic relations orders under the Spousal Pension Rights Act, Chapter 42, article 11, of the Nebraska Revised Statutes. All terms used in this regulation which are defined terms in the Spousal Pension Rights Act shall have the same meaning as provided in the Spousal Pension Rights Act.

002 Procedure to Determine Qualified Status

- 002.01 Upon receipt of a court certified or authenticated domestic relations order involving benefits under a statewide public retirement system, NPERS shall, within ten days, notify in writing the member and the alternate payee that NPERS has received the domestic relations order. If the order pertains to a member receiving benefits from the retirement system, NPERS shall suspend and segregate that portion of the member's benefit payment which would be payable to the alternate payee under the order if it is determined to be a qualified domestic relations order.
- 002.02 NPERS shall review the domestic relations order to determine whether it meets all of the requirements to be deemed a qualified domestic relations order as set forth in the Spousal Pension Rights Act and this regulation. NPERS shall specifically determine that the order clearly specifies:
- a) the name, social security number, and last-known mailing address, if any, of the member;
 - b) the name, social security number, and last-known mailing address, if any, of the alternate payee covered by the order;
 - c) the statewide public retirement system or systems to which the order applies;
 - d) the number of payments or period to which such order applies; and
 - e) the amount or percentage of the member's benefits to be paid by each statewide public retirement system to each alternate payee or the manner in which such amount or percentage is determined.
- 002.03 NPERS shall ascertain that the order does not require the retirement system to:
- a) provide any type or form of benefit, or any option, not otherwise provided under the plan;
 - b) provide increased benefits determined on the basis of actuarial value;
 - c) pay to an alternate payee benefits which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order;
 - d) pay benefits to an alternate payee before the earliest retirement date of a member;
 - e) provide a joint and survivor annuity to the alternate payee and the alternate payee's subsequent spouse; or

f) act contrary to the statutory provisions of the statewide public retirement system.

002.04 If NPERS determines that the domestic relations order does not meet all of the requirements set forth in the Spousal Pension Rights Act and these regulations, NPERS shall, within seven days of making such determination, notify the member and the alternate payee of the basis for such determination. If NPERS is notified in writing within thirty (30) days of the date NPERS makes the notification required under this subsection that the member or the alternate payee is seeking an amended order correcting the deficiencies noted, NPERS shall continue to suspend and segregate that portion of the member's benefit payment which would be payable to the alternate payee under the order if it were to be determined to be a qualified domestic relations order.

002.05 In no event shall NPERS suspend and segregate benefits under sections 002.01 or 002.04 for a period longer than eighteen (18) months from the date the original order is filed with NPERS or the date payments to the alternate payee would commence under the order if qualified, whichever is later. If the order or an amended order is not qualified within the eighteen month period, NPERS shall pay the segregated funds, plus interest, to the member or other beneficiaries entitled thereto, and any order qualified after the eighteen month period will be applied prospectively only.

003 Distribution Procedures

003.01 If an order is determined to be a qualified domestic relations order, NPERS shall allocate and distribute retirement benefits to the member and the alternate payee according to the terms of the order. Payment of the benefit to the alternate payee shall commence either on the member's retirement date or on the first day of the month immediately following the month in which the alternate payee notifies NPERS of the election to begin payment, but not before the member's earliest retirement date.

003.02 If the order pertains to a defined contribution plan, NPERS shall segregate the alternate payee's interest in the member's benefit in a separate account pending distribution. Unless the domestic relations order provides otherwise, the amounts allocated to the alternate payee shall be deducted from each of the member's employer and employee accounts in the same percentage as the total percentage awarded to the alternate payee under the order. The alternate payee shall have the right to allocate the amounts in such account to the various investment options available to members of the plan and shall be subject to the same restrictions upon transfers between investment options as may be applicable to other members of the plan.

003.03 If the order pertains to a defined benefit plan, NPERS shall indicate in the member's account file the existence of the qualified domestic relations order. Upon the triggering of a distribution under the plan to the alternate payee or the member, NPERS shall compute the alternate payee's interest in the member's accrued benefit under the order and shall reduce the member's benefit accordingly.

003.04 If the order does not specify the form of benefit to be taken by the alternate payee, the alternate payee may select any form of benefit available to the member except a joint and survivor annuity covering the alternate payee and the alternate payee's subsequent spouse

- 003.05 If the alternate payee dies prior to receiving any payment of his or her interest in the member's benefit under a qualified domestic relations order, such interest reverts to the member. If the alternate payee dies after commencement of payments of his or her interest, then the alternate payee's beneficiary is entitled to the balance of the alternate payee's interest under the payment option provided by the order or selected by the alternate payee, except a joint and survivor annuity option with the alternate payee and the alternate payee's subsequent spouse. For purposes of this section, payment of the alternate payee's interest in the member's benefit shall be deemed to have commenced on the earlier of the member's retirement date or on the first day of the month immediately following the month in which the alternate payee notifies NPERS of the election to begin payment, but not before the member's earliest retirement date.

004 Pre-approved QDRO language

- 004.01 A member or an alternate payee, or their legal representatives, may submit a proposed domestic relations order to NPERS for review and tentative qualification prior to the order being submitted to the court having jurisdiction over the domestic relations matter.
- 004.02 NPERS shall develop and provide, upon request, model domestic relations order language that meets all of the requirements of the Spousal Pension Rights Act.
- 004.03 Failure to use the model language provided pursuant to this regulation shall not be a basis for determining that the domestic relations order is not a qualified domestic relations order.

005 Administrative Hold on Account

- 005.01 NPERS may place an administrative hold on a member's account prohibiting such member from withdrawing the account balance upon receiving written notice from a person claiming an interest in the member's account advising NPERS that proceedings to obtain a domestic relations order have been initiated and requesting an administrative hold on the account to protect their interest in the account.
- 005.02 NPERS shall immediately acknowledge receipt of the request for an administrative hold and shall notify the member and the person claiming an interest in the member's account of the action NPERS will be taking in response thereto.
- 005.03 NPERS shall release an administrative hold placed on the member's account if:
- (a) the member is awarded his or her entire benefit by the court and provides NPERS with a certified copy of the court's order;
 - (b) the claim is released by a notarized written statement signed by the person claiming an interest in the member's account or his or her legal representative;
 - (c) NPERS receives a domestic relations order for qualification and the member's account is segregated accordingly; or
 - (d) the person claiming an interest in the member's account does not provide a domestic relations order to be qualified within a reasonable period of time, not to exceed six (6) months, after requesting the administrative

hold. Before releasing an administrative hold pursuant to this subsection, NPERS shall notify the person claiming an interest in the member's account, or his or her legal representative, of the intention to release the hold. NPERS shall provide the person claiming an interest in the member's account thirty (30) days within which to file a written objection to such action. For good cause shown, NPERS may extend the administrative hold for an additional period of time.

006 **Notices**

006.01 Any notice required by this regulation shall be sent by first class mail, postage prepaid, to the last-known mailing addresses of the member and the alternate payee.

006.02 The member and the alternate payee may designate alternative representatives for receipt of copies of notices. Such designation of a representative must be in writing and received by NPERS before such designation shall become effective.

Enabling Legislation: Neb. Rev. Stat., §§ 42-1101 through 42-1113, and § 84-1503.

TITLE 303: PUBLIC EMPLOYEES RETIREMENT BOARD

CHAPTER 22 - ELIGIBILITY AND VESTING CREDIT

Current with amendments through Update #277, dated April 22, 2002.

001 General

This regulation governs the application process for eligibility and vesting credit under the County Employees Retirement Act, the School Employees Retirement Act, the State Patrol Retirement Act, and the State Employees Retirement Act.

002 Application Period and Qualifying Employment

- 002.01 State and County Employees Within the first thirty days of employment, a full-time employee may apply to the board for eligibility and vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee.
- 002.02 School Employees Within the first thirty days of employment, a school employee may apply to the board for eligibility and vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time or part-time employee as defined in section 79-902.
- 002.03 State Patrol Members Within the first thirty days of employment, a member may apply to the board for eligibility and vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code.

003 Definitions and Filing Requirements

- 003.01 For purposes of computing the thirty day period specified in sections 002.01, 002.02, and 002.03, employment is deemed to commence on the first day that an eligible employee/member is required to commence performing services for the employer. Accepting an offer of employment or signing a contract of employment shall not constitute employment for purposes of computing the thirty day application period. Employment for State Patrol members shall be deemed to occur on the date such members become sworn officers. For purposes of this regulation, thirty days shall mean thirty calendar days.
- 003.02 Application for eligibility and vesting credit shall be made on forms prescribed by the Nebraska Public Employees Retirement Systems (NPERS). NPERS shall provide application forms to the State, County, and Public School employers that are subject to the County Employees Retirement Act, the School Employees Retirement Act, the State Patrol Retirement Act, and the State Employees Retirement Act to distribute to all new employees. ***The employer shall provide each new employee an application form at the time of the employee's initial employment, the receipt of which shall be acknowledged in writing by the employee.***

- 003.03 In order to receive credit, the application must be properly completed, signed by the applicant and timely filed with NPERS. The application shall be considered filed on time if mailed in an envelope properly addressed to the Nebraska Public Employees Retirement Systems, postage prepaid, and postmarked before midnight of the final filing date. If the final filing date for such application falls on a Saturday, Sunday, or legal holiday, the next secular or business day shall be the final filing date. If the application is not mailed, the date the application is received by NPERS shall be the date used to determine whether the application was timely filed.
- 003.04 Upon receipt of a properly completed and timely filed application, NPERS shall contact the applicant's former employer or retirement plan administrator to verify the applicant's previous governmental plan participation and to ascertain the applicant's eligibility to receive credit. NPERS shall notify the applicant if the applicant qualifies for eligibility and vesting credit.
- 004 Limitations**
A person who has retired and returns to employment with an employer covered by the same retirement system from which the person has received or is receiving a retirement benefit, shall not receive credit for any years of service which were included in computing such person's prior retirement benefit.

Enabling Legislation: Neb. Rev. Stat. §§ 23-2305, 23-2306, 23- 2320, 79-904, 79-917, 79-922, 81-2016, 81-2019, 81-2031.05, 84-1305, 84-1307, 84-1322, and 84-1503.

TITLE 303: PUBLIC EMPLOYEES RETIREMENT BOARD

CHAPTER 23 - COMPUTATION OF FINAL AVERAGE COMPENSATION

Current with amendments through Update #277, dated April 22, 2002.

001 General

This regulation governs the computation of “Final Average Compensation” for purposes of determining retirement benefits under the School Retirement System of the State of Nebraska. All terms used in this regulation that are defined terms in the School Employees Retirement Act (the “Act”) shall have the same meaning as provided in the Act.

002 Compensation Included In Computation Of Final Average Compensation

002.01 Compensation paid to a school employee after June 30 of a fiscal year that is one of the three fiscal years included in determining the school employee’s Final Average Compensation, shall be included in such school employee’s Final Average Compensation if the compensation is for creditable service performed during the fiscal year.

002.02 Compensation paid to a school employee during a fiscal year that is one of the three fiscal years included in determining the school employee’s Final Average Compensation, shall be excluded from such school employee’s Final Average Compensation if the compensation is for creditable service performed before or after the fiscal year.

002.03 Under no circumstances shall a school employee receive a retirement benefit based upon Final Average Compensation that includes compensation encompassing more than 36 months of creditable service.

003 School District Reports

Retirement contribution remittance reports filed with the Nebraska Public Employees Retirement Systems by participating school districts shall clearly identify the period services were rendered by the school employee for which the compensation reported applies.

Enabling Legislation: Neb. Rev. Stat. §§ 79-902, 79-904, and 84-1503.

TITLE 303: PUBLIC EMPLOYEES RETIREMENT BOARD

CHAPTER 24 — RETIREMENT BENEFIT OPTIONS AND DISTRIBUTION RULES

001 **General**

This regulation sets forth the retirement benefit options available to members of the Nebraska State Employees Retirement System, the Retirement System for Nebraska Counties, the Nebraska School Retirement System, and the Nebraska Judges Retirement System. This regulation also sets forth rules to ensure compliance with Internal Revenue Code section 401(a)(9) regarding required distributions.

002 **Definitions**

- 002.01 Life Only Annuity shall mean a monthly benefit payable for the lifetime of the member. The benefit ceases upon death of the member.
- 002.02 Five Years Certain and Continuous Annuity shall mean a monthly benefit payable for the life of the member. If the member dies before sixty (60) monthly payments have been received, the benefit will continue to the member's beneficiary until 60 payments have been made.
- 002.03 Ten Years Certain and Continuous Annuity shall mean a monthly benefit payable for the life of the member. If the member dies before one-hundred twenty (120) monthly payments have been received, the benefit will continue to the member's beneficiary until 120 payments have been made.
- 002.04 Fifteen Years Certain and Continuous Annuity shall mean a monthly benefit payable for the life of the member. If the member dies before one-hundred eighty (180) monthly payments have been received, the benefit will continue to the member's beneficiary until 180 payments have been made.
- 002.05 Twenty Years Certain and Continuous Annuity shall mean a monthly benefit payable for the life of the member. If the member dies before two-hundred forty (240) monthly payments have been received, the benefit will continue to the member's beneficiary until 240 payments have been made.
- 002.06 Payments for a Designated Period Annuity shall mean a monthly benefit payable for a period of time designated by the member. The period of time designated must be at least five (5) years and not more than twenty (20) years in duration. Payments cease at the end of the designated period. If the member dies prior to receiving all payments due, payment will continue to the member's designated beneficiary until all payments in the designated period have been made.
- 002.07 Joint and Survivor Annuity shall mean a benefit payable monthly for the lifetime of the member and the member's spouse. In the event of death of the member, the benefit continues for the beneficiary's lifetime at a specified rate of 50%, 75% or 100%. The percentage is selected by the member at retirement.
- 002.08 Modified Joint and Survivor Annuity shall mean a benefit payable monthly for the lifetime of the member and the member's spouse. In the event of death of either person, the benefit continues to the survivor at a specified rate of 50%, 66 2/3%, or 100%. The percentage is selected by the member at retirement.

- 002.09 Non-Spousal Joint and Survivor Annuity shall mean a benefit payable monthly for the lifetime of the member and a designated beneficiary. In the event of the death of the member, the benefit continues to the designated beneficiary for his or her lifetime at the rate of 50% of the member's benefit.
- 002.10 Contingent Annuity shall mean a benefit payable monthly for the lifetime of the member. At the death of the member, the benefit continues to the surviving spouse at a specified rate of 50%, 66 2/3%, or 100%. The percentage is selected by the member at retirement. If the spouse predeceases the member, the benefit ceases when the member dies.
- 002.11 Cash Refund Annuity shall mean a benefit payable monthly for the lifetime of the member. In the event the member dies before receiving payments equal to the member's account balance at the time of retirement, the difference is paid in a lump sum to the member's beneficiary.
- 002.12 Lump Sum shall mean a refund of the member's account balance in lieu of an annuity.
- 002.13 Systematic Withdrawal shall mean periodic payments in an amount selected by the member. Payments shall cease when the member's account balance reaches zero.
- 002.14 Account Balance shall mean all employee contributions plus earnings or interest accrued on such account. In the State Employees Retirement System and the Retirement System for Nebraska Counties, account balance shall also include all employer contributions, plus accrued earnings, if the member is vested.

003 State and County Retirement Systems

- 003.01 Members of the Nebraska State Employees Retirement System and members of the Retirement System for Nebraska Counties may elect to receive a retirement benefit under the following options:
- 003.01(a) Life Only Annuity;
 - 003.01(b) Ten Years Certain and Continuous Annuity;
 - 003.01(c) Fifteen Years Certain and Continuous Annuity;
 - 003.01(d) Twenty Years Certain and Continuous Annuity;
 - 003.01(e) Cash Refund Annuity;
 - 003.01(f) Payments for Designated Period Annuity;
 - 003.01(g) Joint and Survivor Annuity;
 - 003.01(h) Lump Sum; or
 - 003.01(i) Systematic Withdrawal.
- 003.02 A member may select a partial lump sum distribution combined with a systematic withdrawal or annuity option with respect to the remainder of the member's account balance.

004 School Retirement System

- 004.01 Members of the Nebraska School Retirement System may elect to receive a monthly retirement benefit under one of the following options:
- 004.01(a) Life Only Annuity;
 - 004.01(b) Five Years Certain and Continuous Annuity;
 - 004.01(c) Ten Years Certain and Continuous Annuity;
 - 004.01(d) Fifteen Years Certain and Continuous Annuity;
 - 004.01(e) Cash Refund Annuity; or

004.01(f) Joint and Survivor Annuity;
001.01(g) Non-Spousal Joint and Survivor Annuity.

004.02 A member of the School Retirement System may elect a lump sum refund of the member's account balance in lieu of a monthly retirement benefit. A refund cancels all service credit earned by the member and the member forfeits the right to receive a monthly retirement benefit.

005 Judges Retirement System

005.01 Members of the Nebraska Judges Retirement System may elect to receive a retirement benefit under one of the following options:

005.01(a) Life Only Annuity;
005.01(b) Five Years Certain and Continuous Annuity;
005.01(c) Ten Years Certain and Continuous Annuity;
005.01(d) Fifteen Years Certain and Continuous Annuity;
005.01(e) Cash Refund Annuity;
005.01(f) Modified Joint and Survivor Annuity; or
005.01(g) Contingent Annuity.

005.02 A member of the Judges Retirement System who terminates service as a judge prior to age sixty-five may elect to receive a lump sum refund. A refund cancels all service credit earned by the member and the member forfeits the right to receive a monthly retirement benefit. Termination of service at or subsequent to age sixty-five shall be considered normal retirement and an annuity option must be selected.

006 Minimum Distribution Rules

006.01 To the extent that provisions of the State Employees Retirement Act, the County Employees Retirement Act, the School Employees Retirement Act, the Nebraska State Patrol Retirement Act, and the Judges Retirement Act (the Plans) do not impose more restrictive distribution requirements, and with respect to distributions under the Plans made in calendar years beginning on or after January 1, 2002, the Plans will apply the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code in accordance with the regulations under section 401(a)(9) that were proposed in January 2001, notwithstanding any provision of the Plans to the contrary. This provision shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under section 401(a)(9) or such other date specified in guidance published by the Internal Revenue Service.

Enabling Legislation: Neb. Rev. Stat. §§ 23-2305, 23-2317, 24-704, 24-706, 24-710, 79-904, 79-934, 79-938, 79-955, 84-1305, 84-1319, and 84-1503, and Internal Revenue Code section 401(a).